

APR 9 2007

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of

Susan Arceneaux

Terrell for Senate and Justin Schmidt, in his

official capacity as treasurer

First Bank and Trust

Suzanne Haik Terrell

OncoLogics, Inc.¹

M. Maitland Deland

MUR 5652

2007 APR -9 A 11:28

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GENERAL COUNSEL'S REPORT #4

I. ACTIONS RECOMMENDED:

1. Take no further action and close the file as to Susan Arceneaux.
2. Accept the attached conciliation agreement and close the file as to Terrell for Senate and Justin Schmidt, in his official capacity as treasurer.
3. Take no further action and close the file as to First Bank and Trust.
4. Take no further action and close the file as to Suzanne Haik Terrell.
5. Take no further action and close the file as to OncoLogics, Inc.
6. Take no action other than to admonish M. Maitland Deland.

II. DISCUSSION

A. Introduction

This matter concerns apparent violations found in a Federal Election Commission ("Commission") audit of Terrell for Senate, the principal campaign committee of Suzanne Haik Terrell, during her 2002 race for the United States Senate from Louisiana. The audit revealed that Terrell for Senate ("the Committee") accepted excessive and corporate contributions, accepted an apparent unsecured bank loan, failed to accurately and fully report campaign receipts

¹ This company was previously identified as "OncoLogics" and was believed to be a partnership at the initial stage of the enforcement process. However, information obtained from the company's response shows that the company's full name is OncoLogics, Inc., a medical practice organized as a Subchapter S corporation. The company is identified accordingly in this report.

1 and disbursements (including itemization information for contributions), and failed to file 48-
2 hour notices. See Final Audit Report (approved by the Commission on August 4, 2004).

3 Based on the audit findings and other available information, the Commission found
4 reason to believe that the Committee and Justin Schmidt, in his official capacity as treasurer, and
5 Susan Arceneaux, the Committee's former assistant treasurer, in her personal capacity, violated
6 2 U.S.C. §§ 441b(a), 441a(f), 434(a)(6) and 434(b), and 11 C.F.R. §§ 102.17(c)(8)(i)(B),
7 104.3(a) and (b), and 104.5(f). The Commission also found reason to believe that First Bank and
8 Trust ("First Bank") violated 2 U.S.C. § 441b(a) by making a \$100,000 corporate contribution to
9 the Committee in the form of an unsecured loan, and that Suzanne Haik Terrell violated 2 U.S.C.
10 § 441b(a) by accepting the \$100,000 corporate contribution from First Bank. The Commission
11 further found reason to believe that OncoLogics, Inc. ("OncoLogics"), identified as a partnership
12 based on information obtained during the audit, violated 2 U.S.C. § 441a(a)(1)(A) by making
13 \$3,000 in excessive contributions to the Committee. Finally, the Commission authorized us to
14 enter into pre-probable cause conciliation with the above respondents.²

15 [REDACTED]
16 [REDACTED] In addition, Hurricane Katrina devastated much of
17 New Orleans and the surrounding areas and disrupted the lives and operations of many of the
18 respondents in this matter. Many of them were displaced and were unreachable for a substantial
19 period of time, and the Committee's and Terrell's campaign documents were lost. Given the
20 lack of documentary evidence from the Committee and Terrell, we interviewed Arceneaux,

² The Commission made reason to believe findings regarding an additional respondent in this matter, Sammy Joe Russo. We will circulate a report to the Commission addressing this respondent shortly.

1 Terrell, and several of the Committee's campaign staff in order to reconcile the Committee's and
2 Arceneaux's differing assertions.

3 Although differences remain, as discussed in greater detail below, we recommend that the
4 Commission accept the attached conciliation agreement with the Committee, and take no further
5 action and close the file as to Arceneaux, First Bank, Terrell, and OncoLogics. We further
6 recommend that the Commission take no action other than to admonish M. Maitland Deland, a
7 principal of OncoLogics.

8 **B. Arceneaux**

9 At the initial stage of this matter, it appeared that Arceneaux had recklessly failed to
10 fulfill her treasurer duties based on the sheer volume of reporting errors and other apparent
11 violations that occurred during the time period she performed the duties of treasurer. See MUR
12 5652, Factual and Legal Analysis to Susan Arceneaux. The information available at that time
13 indicated that Arceneaux had received copies of contribution checks, and prepared and signed all
14 of the disclosure reports at issue. *Id.* at 1. Information obtained in response to the Commission's
15 reason to believe findings and during the conciliation process has shed additional light on
16 Arceneaux's conduct and the Committee's activities that lead us to recommend that the
17 Commission exercise its prosecutorial discretion and not hold Arceneaux personally liable for
18 the instant violations.³

19 Arceneaux asserted that the reason to believe findings were based on faulty assumptions
20 and factual errors regarding her conduct. See Arceneaux's Reason To Believe Response

³ The information includes copies of over 3,000 pages electronic mail correspondences between Arceneaux in Fairfax, Virginia and Terrell's campaign staff in Louisiana.

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1 (Attachment 1). As previously mentioned, in order to address her assertions and to further the
2 conciliation process, we informally interviewed several campaign personnel regarding the
3 Committee's activities. In addition to Terrell and Arceneaux, we interviewed the following
4 individuals who were involved with the campaign during the relevant time: Vita Levatino, an
5 independent contractor who conducted the Committee's fundraising; Clifton Newlin, formerly
6 the Committee's designated treasurer; Bill Kearney, a paid consultant who served as senior
7 political advisor of the Committee; and Bryan Blades, who replaced Newlin as the Committee's
8 designated treasurer after the relevant period.

9 Those interviews and other information paint a picture of a dysfunctional campaign, one
10 in which the treasurer's duties were so divided that it was virtually impossible for Arceneaux to
11 effectively fulfill those duties. Specifically, the information shows the following:

12 Terrell started her campaign for the U.S. Senate very late in the election cycle, about four
13 months before the election. She hastily assembled her campaign staff from individuals who had
14 worked with her in a prior State campaign and headquartered her campaign in Baton Rouge,
15 Louisiana. Terrell hired Levatino, an experienced fundraiser, to conduct fundraising for the
16 campaign. Levatino operated out of an office in New Orleans, Louisiana. Terrell designated
17 Newlin, a friend and accountant, as the Committee's treasurer on the Statement of Organization
18 she filed with the Commission registering the Committee. However, since Newlin had no
19 experience with federal campaigns, he was treasurer in name only.⁴ Shortly after registering the
20 Committee with the Commission, Terrell hired Arceneaux, who worked out of her office in

⁴ Available information shows that Newlin did not perform any meaningful treasurer duties for the Committee. He does not appear to have prepared, approved, or signed any of the reports filed with the Commission.

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1 Fairfax, Virginia, to prepare and file the Committee's disclosure reports with the Commission.⁵
2 Within days of hiring Arceneaux, the Committee's first disclosure report was due.⁶ Arceneaux
3 apparently was also designated the assistant treasurer as a logistical convenience to sign the
4 Committee's disclosure reports, which had to be filed with the Secretary of the U. S. Senate in
5 Washington, D.C. in paper form.

6 Though she was the assistant treasurer and was responsible for preparing and filing the
7 Committee's reports, Arceneaux did not directly receive the Committee's contributions.
8 According to information from the interviews, the campaign received contributions at both the
9 Baton Rouge headquarters and at Levatino's New Orleans office, with most going to Baton
10 Rouge. Contribution checks received at the campaign's Baton Rouge headquarters were
11 processed by whoever happened to collect the mail. The checks were copied, deposited, and
12 entered into a spreadsheet. Copies of the contribution checks received at Levatino's New
13 Orleans office were similarly processed. Levatino also received copies of checks that were
14 processed by the Baton Rouge headquarters. Initially, Arceneaux was sent spreadsheets with the
15 receipt and disbursement data to prepare the disclosure reports. She later requested copies of
16 contribution checks. Eventually, after repeated requests to the campaign, Levatino sent copies of
17 the processed contribution checks and accompanying correspondence (generally by facsimile
18 transmission or mail) to Arceneaux, along with related spreadsheets, to complete the
19 Committee's disclosure reports.

⁵ Arceneaux was the president of Political Compliance Services, Inc., a company that purports to specialize in Federal Election Commission compliance services.

⁶ Arceneaux was hired on August 6, 2002 and had to file a report on August 9, 2002, because the actual filing date (August 11, 2002) fell on a Sunday.

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1 According to the interviewees' statements, the Committee did not have any established
2 written guidelines or procedures for handling contributions. Staff in Louisiana who received a
3 contribution was expected to examine the contribution to ensure that it was legal. Levatino
4 stated that she would routinely return any facially illegal contribution. While no one in the
5 campaign was specifically assigned to address questionable contributions, campaign staff
6 expressed a belief that Arceneaux was ultimately responsible for determining the legality of
7 contributions. Arceneaux stated that, based on the copies of checks that were sent to her, she
8 questioned facially illegal contributions, bringing them to the attention of the Committee's staff
9 in Louisiana. She further explained, however, that she was unable to effectively address
10 questionable contributions, since she did not receive contributions directly and did not have
11 access to the campaign's bank account or checkbook to refund contributions.

12 In fact, there was general consensus among the interviewees that Arceneaux did not have
13 access to the Committee's bank account or checkbook, and that very few campaign staff had
14 access to the Committee's checkbook to disburse funds. Information shows that, as with the
15 contributions, Arceneaux (and apparently Levatino) did not control the Committee's
16 disbursements. Information about the Committee's disbursements was compiled in the
17 campaign's Baton Rouge office and sent to Arceneaux, through Levatino.

18 In preparing the Committee's disclosure reports, Arceneaux used information regarding
19 the Committee's receipts and disbursements that she received from Terrell's campaign staff in
20 Louisiana. If Arceneaux had questions about the information she received, she would contact the
21 campaign staff in Louisiana. Most of the questions were generally submitted by electronic mail

1 ("e-mail") to Levatino. Notably, information shows that Arceneaux submitted completed
2 disclosure reports to the Louisiana campaign staff for review and approval before she filed them.

3 Though it is clear from the Commission's audit that the Committee's disclosure reports
4 were deficient in many respects, it is less clear that Arceneaux acted recklessly in preparing and
5 filing the reports. Rather, the available information indicates that Arceneaux did not intend to
6 perform the treasurer duties, and, significantly, she was not provided with the appropriate tools
7 to effectively perform those duties. As previously mentioned, the structure and logistics of the
8 campaign was such that Arceneaux was not in control of the Committee's bank account or its
9 checkbook; she was entirely reliant on the campaign's Louisiana staff for information regarding
10 the Committee's receipts and disbursements. For example, since she did not directly receive or
11 deposit the contributions, she could not return questionable contributions. She was similarly
12 unable to refund contributions because she did not have access to the Committee's checkbook or
13 checking account. Furthermore, no one from the Louisiana campaign staff directly reported to
14 Arceneaux regarding the Committee's receipts or disbursements, so she had no one on the
15 campaign staff that she could instruct to accomplish those tasks. Consequently, Arceneaux was
16 unable to effectively fulfill the duties imposed on treasurers by the Federal Election Campaign
17 Act of 1971, as amended ("the Act") and the Commission's regulations. See 2 U.S.C.
18 §§ 434(a)(1) and 434(b); 11 C.F.R. § 104.3(a) and (b). Arceneaux was similarly unable to
19 effectively exercise best efforts regarding the contributions. See 2 U.S.C. § 433(j); 11 C.F.R.
20 §§ 103.3(b) and 104.7.

21 In sum, it appears that the Committee's process for preparing its disclosure reports was in
22 severe disarray. The disarray was exacerbated by the sheer volume of contributions that the

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1 Committee received, especially for the runoff election. It does not appear that Arceneaux was
2 responsible for the resulting deficiencies in the Committee's reports.⁷ Therefore, based on the
3 information previously discussed, we recommend that the Commission exercise its prosecutorial
4 discretion in this instance and not hold Arceneaux personally liable for the deficiencies in the
5 Committee's disclosure reports. Rather, we recommend that the Commission close the file with
6 respect to Arceneaux and address the deficiencies in the Committee's disclosure reports through
7 a conciliation agreement with the Committee and its treasurer, in his official capacity.

8 **C. The Committee and Treasurer**

9 As previously mentioned, the Commission authorized pre-probable cause conciliation
10 with the Committee and Justin Schmidt, in his official capacity as treasurer.⁸ [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

⁷ In her response to the Commission's reason to believe finding, Arceneaux characterized herself as a "glorified bookkeeper," who simply entered the financial data that she was provided. See Attachment 1 at 2, 3.

⁸ Schmidt was designated the Committee's treasurer on December 22, 2003, well after the activity in this matter occurred. However, he was the Committee's treasurer at the time of the Commission's reason to believe findings.

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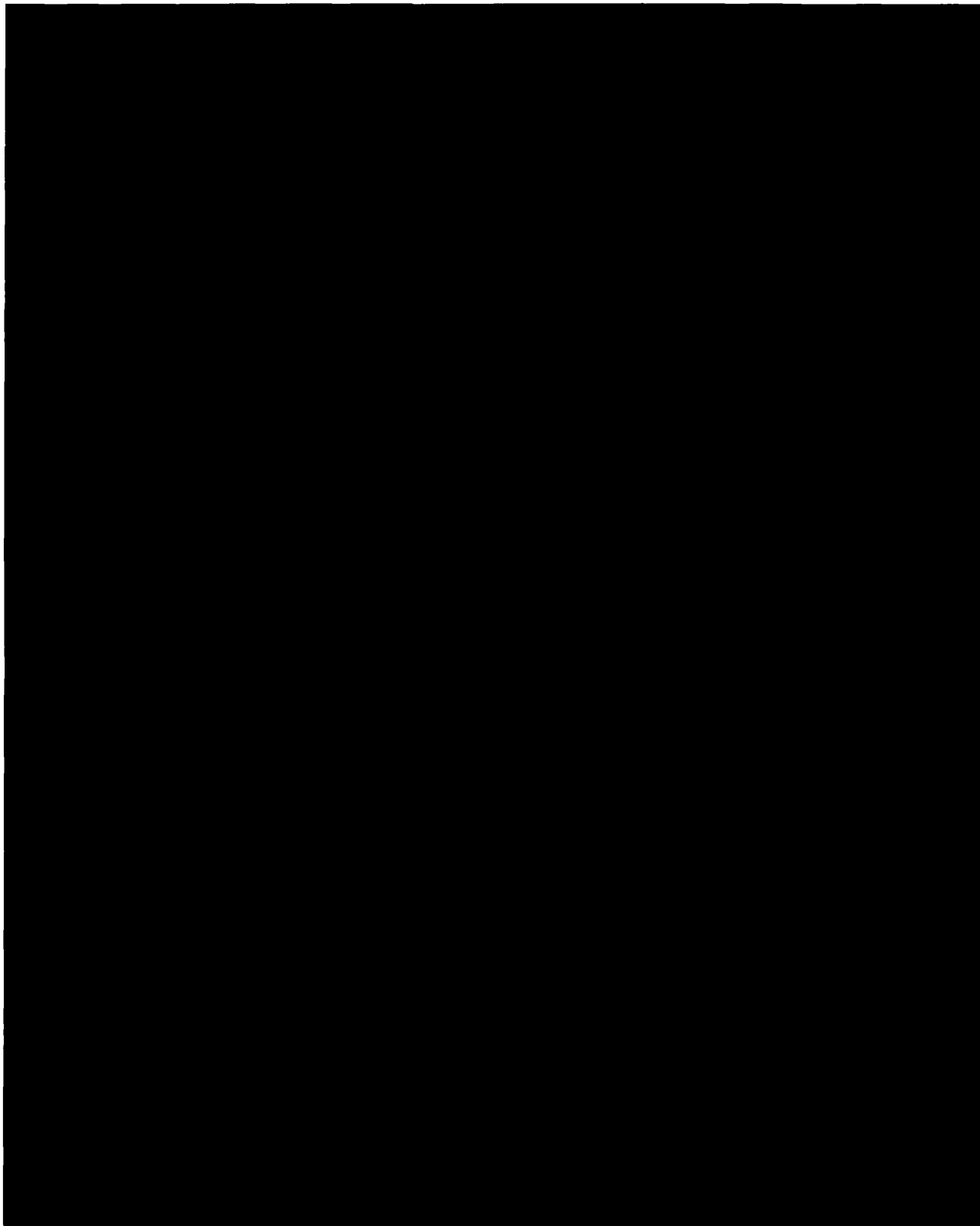
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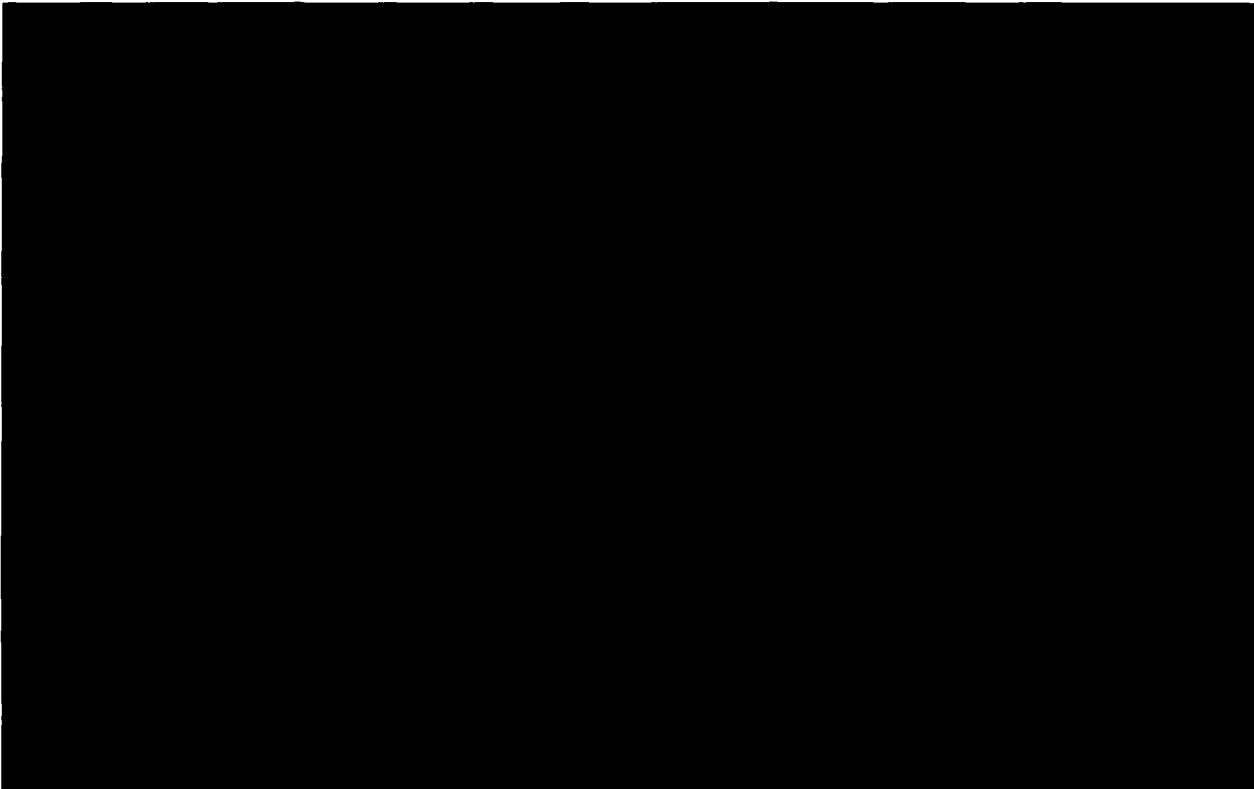
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12 Accordingly, we recommend that the Commission accept the attached signed conciliation
13 agreement and close the file with regard to the Committee and its current treasurer.

14 **D. First Bank and Terrell**

15 The Commission's reason to believe finding regarding First Bank and Terrell was based
16 on information showing that in August of 2002, First Bank made an unsecured \$101,000 loan to



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1 Terrell.¹¹ Terrell, in turn, loaned \$100,000 of the proceeds to the Committee. Based on
2 information obtained during the audit of the Committee, it appeared that the bank loan did not
3 satisfy the "assurance of repayment" requirement set forth in the Act and the Commission's
4 regulations. See 2 U.S.C. § 431(8)(B)(vii); 11 C.F.R. § 100.7(b)(11). The Commission
5 authorized us to enter into pre-probable cause conciliation with First Bank and Terrell, [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 In response to the Commission's reason to believe finding, First Bank asserted that the
9 loan was in fact made on a basis that assured repayment and provided documentary evidence that
10 the loan was repaid on December 16, 2002.¹² See First Bank's Reason To Believe Response
11 (Attachment 3). First Bank also voluntarily provided several documents (including an affidavit
12 from its Senior Vice President and Chief Compliance Officer, a promissory note signed by
13 Terrell individually, an Equifax credit report on Terrell, and a loan application that included a
14 financial statement from Terrell and her husband) to demonstrate that First Bank based its loan
15 approval on its assessment of Terrell and her husband's creditworthiness and assets at that
16 time.¹³ The loan documents First Bank provided show that Terrell and her husband had a
17 combined annual income of [REDACTED] in annual salary for Terrell and [REDACTED] in
18 annual salary for her husband, a physician) and a combined net worth of [REDACTED]. According to
19 the documents, the Terrells also had [REDACTED] in liquid assets and a total of over [REDACTED] in

¹¹ The \$101,000 amount included a 1 percent loan fee of \$1,000.

¹² For her part, Terrell submitted a very brief response asserting that First Bank considered her significant assets and long standing business relationship with the bank. See Terrell's Reason To Believe Response (Attachment 4).

¹³ The documents also show that First Bank reviewed the Terrells' income tax returns.

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1 equity in their residence and rental property. First Bank also asserted that it concluded that the
2 Terrells' finances were "more than sufficient to cover this loan, if necessary." The documents
3 show that First Bank deemed Terrell's personal cash flow, future income, liquidation of assets,
4 and household income as sources of repayment for the loan.¹⁴

5 Although First Bank made the loan based on Terrell and her husband's combined
6 finances, it also asserted that Terrell would have qualified for the loan based on her sole assets.
7 First Bank pointed out that Terrell owned an undivided one-half interest in the couple's joint
8 assets as community property because Louisiana is a community property state. [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 First Bank also provided additional internal bank documents demonstrating that the loan
16 was made in accordance with the bank's standard business practices. In particular, First Bank
17 provided documents showing that it conducted a risk assessment of the loan. The documents
18 show that the loan was assigned a risk rating of "5" on a 1-10 scale. First Bank asserted that the
19 "5" risk rating was assigned to 44% of the bank's entire loan portfolio for the relevant time
20 period. First Bank also provided evidence that it conducted a routine credit analysis of Terrell's

¹⁴ First Bank asserted that it also considered the fact that Terrell was a successful lawyer, who had been affiliated with a prestigious law firm and that she was at the time Louisiana's Commissioner of Elections.

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1 credit history. An Equifax credit report the bank provided shows that Terrell was assigned a
2 [REDACTED] Beacon score" based on a 350-800 range.¹⁵

3 First Bank further provided information showing that the 7.5% interest rate on the Terrell
4 loan was similar to those of other borrowers. The bank provided redacted information on four
5 loans made during the same time period for similarly positioned loans. Two of the loans bore a
6 lower interest rate (6.75% and 5.5%), one had the same (7.5%) rate and the remaining one bore a
7 higher rate (8.7%).

8 The Act permits banks to make loans to candidates and committees provided that the
9 loans are made in the ordinary course of business. 2 U.S.C. § 431(8)(B)(vii); 11 C.F.R.
10 § 100.7(b)(11). As pertinent in this matter, a loan is made in the ordinary course of business
11 when, among other things, it is made on a basis that assures repayment.¹⁶ 2 U.S.C.
12 § 431(8)(B)(vii)(II); 11 C.F.R. § 100.7(b)(11). Loans are made on a basis that assures repayment
13 if there is sufficient collateral, the bank has a perfected security interest in that collateral and the
14 fair market value of the collateral is equal to or greater than the loan amount and any senior liens.
15 11 C.F.R. § 100.7(b)(11)(i)(A)(1). Alternatively, banks can assure repayment by obtaining a
16 written agreement in which the candidate pledges future receipts to the bank. 11 C.F.R.
17 § 100.7(b)(11)(i)(B). However, when neither of these conditions exists, the Commission can

¹⁵ According to First Bank, the Beacon score, a credit scoring system utilized by Equifax Credit Bureau, is a number used by lenders in determining the likelihood of timely debt repayment. It represents a snapshot of a debtor's overall credit risk at a specific time. First Bank stated that its minimum permissible Beacon Score was 650.

¹⁶ Loans must also be made in accordance with applicable law. The loan at issue appears to have been made in accordance with the applicable Louisiana statute governing commercial loans. The promissory note First Bank provided states that the loan at issue was "subject to La. R.S. 9:3509," the applicable statute that governs commercial loans in Louisiana. In addition, loans must bear the usual and customary interest rate of the lending institution for the category of the loan involved, must be evidenced by a written instrument, and be subject to a due date or amortization schedule. 11 C.F.R. § 100.7(b)(11). Terrell's loan satisfied these additional requirements. The loan bore a 7.5% interest rate that was within the range of rates First Bank charged for similarly rated loans, was evidenced by a signed promissory note and loan application, and was subject to a one-year due date.

1 determine on a case-by-case basis whether the loan was made on a basis that assures repayment
2 based on the totality of the circumstances. 11 C.F.R. § 100.7(b)(11)(i); *see* Advisory Opinion
3 1994-26 (Cunningham); Explanation and Justification, *Loans from Lending Institutions to*
4 *Candidates and Political Committees*, 56 Fed. Reg. 67118 (1991).

5 In considering the totality of the circumstances, the Commission examines evidence of a
6 pre-existing relationship between the lending institution and the candidate, and whether the terms
7 of the agreement appear to be unduly favorable to the candidate, among other factors. *See*
8 Advisory Opinion 1994-26 (Cunningham). The Commission has typically found no violation
9 where, under the totality of the circumstances test, there was sufficient evidence demonstrating
10 that the bank intended assurance of repayment in making the loan to the candidate.

11 For example, in MUR 5496 (Huffman for Congress), a similar matter currently in pre-
12 probable cause conciliation, Lawrence David Huffman, a candidate for the U.S. House of
13 Representatives, obtained a \$100,000 loan from a bank and placed the proceeds of the initial
14 \$100,000 loan into a certificate of deposit, which served as collateral for the loan. When the loan
15 was renewed, the candidate used the money from the certificate of deposit for campaign
16 purposes, thus leaving no collateral for the renewal loan. In the Huffman matter, the bank
17 provided the Commission with information demonstrating that it conducted an in-depth review
18 of Huffman's financial background and looked for sources of repayment prior to granting the
19 unsecured renewal loan. Specifically, the bank reviewed Huffman's U.S. House of
20 Representatives Financial Disclosure Statement, which he included with the loan application, the
21 candidate's credit score and credit history, the candidate's mortgage information, and the
22 candidate's account balance on his retirement account. The information showed that, at the time

1 Huffman had an annual salary of [REDACTED] and had a credit score of [REDACTED] out of a maximum of
2 850. Further, Huffman's home had a tax value of \$200,400 with an outstanding mortgage
3 balance of \$23,123. Huffman had also agreed to use funds from his retirement savings to repay
4 the loan.

5 The bank in the Huffman matter had concluded that based on his financial information,
6 Huffman had sufficient assets to cover the \$100,000 loan, noting that Huffman had a good
7 payment history with the bank. The bank satisfied the Commission's totality of the
8 circumstances standard, since the bank made the \$100,000 loan to Huffman on a basis that
9 assured repayment following a financial assessment of his creditworthiness, assets, payment
10 history, and pursuant to the bank's standard business practices. The Commission took no further
11 action regarding the loan in that matter.

12 As the loan to Terrell was unsecured, we evaluate it based on the Commission's "totality
13 of the circumstances" standard. In concluding that the loan meets that standard, we consider that
14 First Bank made a similar financial assessment of Terrell's creditworthiness and assets, pursuant
15 to the bank's standard business practices, as the bank in the Huffman matter. We believe that the
16 financial information the bank in the Huffman matter relied on in granting the renewal loan is
17 comparable to the financial information relied upon by First Bank in making the instant loan to
18 Terrell. In particular, Huffman had a credit score of [REDACTED] (out of a maximum of 850) while
19 Terrell had a credit score of [REDACTED] (out of a maximum of 800). Huffman had an annual salary of
20 \$87,625, while Terrell's annual salary was [REDACTED]. Finally, while Huffman had home equity in
21 the amount of \$177,000, the Terrells had more than \$400,000 in home equity. Terrell
22 independently had home equity of \$215,000. Thus, it appears that First Bank's efforts to assure

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1 repayment of the Terrell loan is reasonable when compared to the efforts to assure repayment of
2 the loan in the Huffman matter.¹⁷

3 As the information provided by First Bank demonstrates that the bank followed
4 customary lending procedures, such as evaluating Terrell's assets, creditworthiness, and payment
5 risk, and the loan was in fact repaid months before the due date, we conclude that the loan was
6 made on a basis that assured repayment in the ordinary course of business. Therefore, we
7 recommend that the Commission take no further action as to First Bank and Terrell, and close
8 the file as to them.

9 **E. OncoLogics and M. Maitland Deland**

10 The Commission's reason to believe finding that OncoLogics made \$3,000 in excessive
11 contributions to the Committee was based on information obtained in the audit identifying
12 OncoLogics as a partnership that made \$5,000 in contributions to the Committee.

13 In response to the Commission's finding, M. Maitland Deland, M.D., a principal of

¹⁷ The conclusion regarding the instant loan is also supported by other similar bank loans that the Commission concluded were properly made under the Commission's totality of the circumstances standard. In MUR 5381 (Bishop), the Commission found, based on a totality of the circumstances, no reason to believe that America First Credit Union violated the Act when it granted a signature loan to the candidate. In that matter, the candidate's loan was made without direct collateral. However, information showed that the transaction with the candidate included an analysis of his creditworthiness and that the loan was made on the same terms and conditions as loans granted to other customers. See MUR 5381 (Bishop), FGCR at 23-24; see also MUR 5453 (Giordano), FGCR at 6 (finding that the bank followed its internal procedures and guidelines in making the candidate loan); MUR 5198 (Cantwell), FGCR at 9 (finding the loan was made on a basis that assured repayment where the bank considered the candidate's net worth, assets, pre-existing relationship with the bank and payment history on previous transactions).

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1 OncoLogics,¹⁸ submitted a notarized affidavit and bank statements showing that OncoLogics did
2 not make any contributions to the Committee. Rather, the contributions were in fact personal
3 contributions Dr. Deland made for herself and other colleagues. In particular, Dr. Deland stated
4 that she contributed \$2,000 to the Committee on November 7, 2002 using a personal check from
5 an account in her name, and that on November 11, 2002, she made a \$3,000 contribution using
6 the same account. Copies of the checks that she provided displayed "M. Maitland Deland -
7 Personal" in the header on the checks and showed that each check was made out to "Suzanne
8 Terrell Campaign Fund."

9 Dr. Deland explained that she intended the contributions to be attributed to herself and
10 her colleagues. The \$2,000 was to be attributed equally to her and her colleague, Si Brown. In
11 fact, a copy of the check stub that Dr. Deland provided included the following typed notation:
12 "From: M. Maitland Deland MD and Si Brown."¹⁹ Similarly, the \$3,000 contribution was to be
13 attributed equally to her and two other colleagues, Dr. Andrew Harwood and Dr. Stephen Wilt.
14 The check stub for that check showed the following typed notation: "From: M. Maitland
15 Deland MD, Andrew Harwood MD & Stephen Wilt MD."²⁰ Dr. Deland claims that she has a
16 very limited history with federal contributions and relied upon the Committee to review her

¹⁸ In a correspondence to the Commission, M. Maitland Deland, M.D. appears on OncoLogics' letterhead as the company's President.

¹⁹ Dr. Deland also claimed that it was customary in her medical practice for principals of the company to use their personal checking accounts to make disbursements on behalf of other principals and to reconcile such payments among the principals at a later date.

²⁰ Notably, the Committee's 2002 Pre-Runoff Report shows corresponding \$1,000 contributions from Drs. Harwood and Wilt around the time of the contributions. The memo item for both contributions stated "Partnership Attribution: OncoLogics."

1 contributions and notify her of any impropriety.²¹ Since they did not, she believed the
2 contributions were in compliance with federal law when the Committee deposited them.
3 Therefore, based on the information discussed above, we recommend that the Commission take
4 no further action and close the file with respect to OncoLogics.

5 The Commission previously found reason to believe that Dr. Deland violated 2 U.S.C.
6 § 441a(a)(1)(A), but took no further action and closed the file as to her.²² See Commission's
7 Certification dated April 6, 2005. The Commission also admonished Dr. Deland against future
8 violations of 2 U.S.C. § 441a(a)(1)(A).²³ The new information, however, indicates that
9 Dr. Deland may have made contributions in the name of another. Nevertheless, as discussed
10 below, this Office does not recommend that the Commission pursue additional enforcement
11 action regarding her in this instance.

12 The information shows that Dr. Deland intended to attribute to her colleagues portions of
13 her \$2,000 and \$3,000 contributions and raises the issue of whether Dr. Deland may have also
14 violated 2 U.S.C. § 441f. The Commission's regulations at 11 C.F.R. § 110.4(b)(2) describe
15 examples of contributions in the names of others to include making a contribution of money and
16 attributing as the source of the money to another person when in fact the contributor is the
17 source. As Dr. Deland acknowledges that she was the source of the funds used to make the
18 contributions in the names of her colleagues, there appears to be reason to believe that

²¹ Dr. Deland maintained that the check stubs were attached to the checks when they were delivered to the Committee.

²² The Commission took similar action regarding nearly all of the respondents who made excessive contributions to the Committee because the Commission concluded that the individual contributors would not have known whether the Committee had net debts outstanding from the primary and general elections at the time they made their contributions to the Committee.

²³ Dr. Deland was notified of the Commission's decision by letter dated April 21, 2005.

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1 Dr. Deland violated 2 U.S.C. § 441f by making contributions in the names of others.²⁴

2 However, we do not believe that it would be worthwhile to pursue additional enforcement
3 action with respect to Dr. Deland in this instance. As previously mentioned, the Commission has
4 notified Dr. Deland that it has closed the file as to her regarding this matter, albeit solely for
5 making excessive contributions. Both the section 441a(a)(1)(A) violation and the proposed 441f
6 violation stem from the same \$5,000 in contributions Dr. Deland made to the Committee. In
7 addition, the contributions in the names of others do not appear to have been the result of a
8 scheme to disguise or conceal the true source of the contributions and do not appear to be
9 knowing and willful. In fact, Dr. Deland's intentions were shown on the check stubs that were
10 provided to the Committee. In addition, in her affidavit Dr. Deland claims that she believed that
11 her contributions and proposed attributions were proper and expected that the Terrell Committee
12 would return the contributions if they were not. Finally, and significantly, Dr. Deland has
13 voluntarily disclosed her actions. Therefore, considering all of the above factors, we recommend
14 that the Commission take no action other than to admonish Dr. Deland.

15 **III. RECOMMENDATIONS**

- 16 1. Take no further action and close the file as to Susan Arceneaux.
17

²⁴ The fact that Dr. Deland may have made the contributions based on her asserted customary business practice of using personal funds to pay expenses of co-principals and later reconciling those payments does not obviate the violation. In fact, the Commission's regulations require that when making a joint contribution, a contribution made by more than one person with a single check or other written instrument, each contributor must sign the instrument or a separate written statement accompanying the contribution. 11 C.F.R. § 110.1(k). The check copies Dr. Deland provided to this Office do not show that her colleagues signed the contribution checks, and Dr. Deland does not state whether her colleagues provided the requisite signed statement. The Commission's regulations also state that, absent evidence to the contrary, any contribution made by check, money order, or other written instrument shall be reported as a contribution by the last person signing the instrument prior to delivery to the candidate or committee. See 11 C.F.R. § 104.3(c). Since it does not appear that the checking account Dr. Deland used to make the contributions was a joint account shared with her colleagues, the contributions at issue could not lawfully be attributed to them.

2. Accept the attached conciliation agreement and close the file as to Terrell for Senate and Justin Schmidt, in his official capacity as treasurer.
3. Take no further action and close the file as to First Bank and Trust.
4. Take no further action and close the file as to Suzanne Haik Terrell.
5. Take no further action and close the file as to OncoLogics, Inc.
6. Take no action other than to admonish M. Maitland Deland.
7. Approve the appropriate letters.

Thomasenia P. Duncan
Acting General Counsel

4/6/07
Date

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